

REMARKS/ARGUMENTS

The present Amendment is responsive to the Final Office Action mailed November 3, 2006. A Petition for a three-month extension of the term for response to the Office Action, to and including May 3, 2007, is transmitted herewith. A Request for Continued Examination (RCE) is also submitted herewith.

Claims 1-20 remain pending in the present application. Claims 1, 19, and 20 have been amended. Support for the claim amendments can be found in the current specification, for example, at least in paragraphs [0086]-[0087]. No new matter has been added.

In the present Office Action, the Examiner rejected claims 1, 2, and 19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,997,432 to Keller ("Keller"). The Examiner asserts that Keller discloses a spinal device with first and second baseplates that are articulatable relative to one another and have angled perimeters that slope downward into the plate surface. The Examiner further asserts that FIG. 3 of Keller shows a manipulation tool that has an angled distal end with jaws being angled (FIG. 2) to correspond to the angled perimeter of the baseplates.

Applicants respectfully assert that amended independent claims 1 and 19 are unanticipated by Keller because the cited reference neither teaches nor suggests a spinal orthopedic device and tool set, comprising an intervertebral spacer device having first and second baseplates, wherein at least one of the baseplates has an angled perimeter, and a manipulation tool having "a correspondingly angled distal end including a wedge-shaped extension projecting therefrom." In the current Action, the Examiner specifies "angled perimeter surfaces" of the baseplates and cannot also use this structure

as a wedge-shaped extension as recited in amended claims 1 and 19. Therefore, claims 1 and 19 are not anticipated by *Ralph*. Applicants therefore respectfully request reconsideration and allowance of the claims over *Ralph*. Claim 2 is unanticipated, *inter alia*, by virtue of its dependence from claim 1, which is unanticipated for the reasons set forth above.

Further in the present Action, the Examiner rejected claims 3-18, and 20 under 35 U.S.C. § 103(a) as being anticipated by *Keller* in view of PCT Application No. WO 01/62191 to *McGahan et al.* ("*McGahan*"). The Examiner asserts that *Keller* fails to disclose the baseplates having three flat perimeter surfaces with two of the perimeter surfaces forming corners. The Examiner further asserts that *McGahan* teaches that angled perimeter flat surfaces are provided to prevent rotation of the implant when inserting the tool. Therefore, the Examiner contends that it would have been obvious to one of ordinary skill in the art to utilize angled flat perimeter surfaces on the plates and tool as taught in *McGahan* and modify the spinal implant and tool set of *Keller* such that it provides the surgeon with more precise control of the spinal implant as the device is implanted.

Applicants respectfully assert that claims 3-18, and amended claim 20 are patentable over *Keller* in view of *McGahan*. *McGahan* is directed towards a manipulation tool for inserting a bone graft. The bone graft is a non-moveable single element having a plurality of screw holes extending therethrough. At no point does *McGahan* teach or suggest that the bone graft may include a first portion which is articulatable to a second portion. Therefore, a modification of the shape or engaging structure of the tool and that of the implant in the cited references to make obvious the structure as recited in the amended claims would not be within the skill of one ordinary

skill in the art as argued by the Examiner.

In contrast, the wedge-shaped extension projecting from the distal end of the manipulation tool of the present invention does change the ability of the device's baseplates from articulating with respect to one another. A discussion of the wedge-shaped extension can be found in paragraph [0138] of the current specification and is outlined below:

"Additionally with regard to the wedge plate inserter/impactor 4000, the distal end 4040 has a wedge-shaped extension 4042 including upper 4200g and lower 4200h wedge surfaces corresponding to and fittable against the inwardly facing surfaces of the artificial intervertebral disc (e.g., the lower surface 164aof the upper baseplate 168a of the disc 160, and the upper surface 164bof the lower baseplate 168b of the disc 160, respectively) to be implanted, causing the baseplates to be angled at a 15 degree lordosis angle, with the lower surface 164aof the upper baseplate 168a held against the upper surface 4200g, and the upper surface of the shield being held against the lower surface 4200h, as best shown in FIGS. 4hh-11."

For these reasons, claim 1 is unobvious over Keller in view of McGahan because the cited references neither teaches nor suggests the correspondingly angled distal end of the manipulation tool includes a wedge-shaped extension projecting therefrom. Claims 3-18, are unobvious, *inter alia*, by virtue of their dependence from claim 1, which is unobvious for the reasons set forth above.

Further, amended claim 20 also includes the recitation that the correspondingly angled distal end of the manipulation tool includes a wedge-shaped extension projecting therefrom. Therefore, claim 20 is unobvious over Keller in view of McGahan for at least the same reasons as amended claim 1.

In view of the above, each of the presently pending


claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: May 2, 2007

Respectfully submitted,

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